

Appl. No. : 10/633,404
Filed : August 1, 2003

REMARKS

Claims 1, 3-8, 10-13, 15, 16, 18-22, 24-29, 31-34, 36, 37, 39-43, 45-50, 52-55, 57, 58, and 60-81 are pending in this application. Claims 1, 3-6, 15, 16, 18-22, 25-27, 36, 37, 39-43, 45-48, 57, 58, and 60-65 have been amended. Claims 2, 17, 23, 38, 44, and 59 are canceled. Claims 9, 14, 30, 35, 51, and 56 are withdrawn as drawn to a nonelected group. New Claims 66-81 have been added. Support for the amendments and new claims is found in the specification and claims as filed.

Interview

Applicants thank Examiner Mallari for the courteous and helpful interview conducted with Applicants' representative, Laura Johnson, on April 25, 2007.

Allowable Subject Matter

Claims 2, 18, 23, 39, 44, and 60 have been objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claim 1 has been amended to recite the limitations of Claim 2, and Claim 2 has been canceled. Claims 3-8, 10-13, 15, 16, 19, 20, and 21 depend from Claim 1, either directly or through an intervening claim.

Claim 18 has been rewritten into independent form including all limitations of base Claim 1 and intervening Claim 17.

Claim 22 has been amended to recite the limitations of Claim 23, and Claim 23 has been canceled. Claims 24-29, 31-34, 36, 37, 40, 42, and 42 depend from Claim 22, either directly or through an intervening claim.

Claim 39 has been rewritten into independent form including all limitations of base Claim 22 and intervening Claim 38.

Claim 43 has been amended to recite the limitations of Claim 44, and Claim 44 has been canceled. Claims 45-50, 52-55, 57, 58, and 61-63 depend from Claim 43, either directly or through an intervening claim.

Claim 60 has been rewritten into independent form including all limitations of base Claim 43 and intervening Claim 59.

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Accordingly, Applicant respectfully requests that the objection to Claims 18, 39, and 60 be withdrawn, and that amended Claims 1, 22, and 43 be allowed.

Claim Objection

Claims 43 and 65 have been objected to because of formalities. Claim 43 has been amended to replace “of such” with “if such.” Claim 65 has been amended to delete the phrase “of such.” In view of the foregoing amendment, Applicants respectfully request withdrawal of the objection.

Election/Restrictions

Applicants gratefully acknowledge that in light of the amendments to claims 3, 24, and 45, the restriction between groups A1-A3 is withdrawn. Claims 9, 14, 30, 35, 51, and 56 have been canceled as drawn to nonelected subject matter. Applicants reserve the ability to pursue the canceled claims, or similar claims, in one or more continuing patent applications.

Claim Rejections - 35 U.S.C. § 102(b) - Mastroianni

Claims 1, 3-6, 12, 13, 15-17, 19-21, 43, 45-48, 54, 55, 57-59, and 61-65 have been rejected under 35 U.S.C. §102(b) as anticipated by U.S. Patent No. 6,424,847 (“Mastroianni”). As discussed above, each of Claims 1, 3-6, 12, 13, 15-16, 19-21, 43, 45-48, 54, 55, 57-58, and 61-63 is either allowable or depends from an allowable claim, either directly or through an intervening claim. Claims 64 and 65 as amended are currently pending. New Claims 66-73 depend from Claim 64, and new Claims 74-81 depend from Claim 65. Claims 17 and 59 have been canceled without prejudice, solely to advance prosecution of the remaining claims. Applicants reserve the ability to pursue the canceled claims, or similar claims, in one or more continuing applications.

“A rejection for anticipation under section 102 requires that each and every limitation of the claimed invention be disclosed in a single prior art reference.” *See, e.g., In re Paulsen*, 31 U.S.P.Q.2d 1671 (Fed. Cir. 1994). Mastroianni does not disclose every element of Applicants’ pending Claims 64 and 65, and therefore cannot be considered as an anticipating reference under 35 U.S.C. § 102(b).

Pending Claim 64 recites a method for calibrating a glucose sensor comprising, *inter alia*, a step of “evaluating at least one of said matched data pairs, wherein evaluating comprises at least one of evaluating a rate of change of the analyte concentration, evaluating a congruence of

respective sensor and reference data in a matched data pair, and evaluating physiological changes.” Pending Claim 65 recites a computer system for calibrating a glucose sensor comprising, *inter alia*, “a calibration evaluation module that evaluates one or more matched data pairs, wherein said evaluation calibration module evaluates at least one of a rate of change of the analyte concentration, a congruence of respective sensor and reference data in matched data pairs, and physiological changes.”

Mastrototaro is cited as teaching a method for maintaining calibration of a substantially continuous analyte sensor, wherein matched data pairs are provided by matching reference analyte data to substantially time corresponding sensor data. However, Mastrototaro neither teaches nor suggests evaluating matched data pairs by evaluating a rate of change of the analyte concentration, evaluating a congruence of respective sensor and reference data in a matched data pair, and evaluating physiological changes, as recited in amended Claim 64, or a calibration module that does such an evaluation, as recited in amended Claim 65.

Because Mastrototaro does not disclose every element of Applicants’ Claims 64 and 65, as well as their corresponding dependent claims, Applicants respectfully request withdrawal of the rejection.

Claim Rejection - 35 U.S.C. §103(a) – Mastrototaro in view of Sun et al.

Claims 11, 22, 24-27, 32-34, and 53 have been rejected under 35 U.S.C. §103(a) as obvious over Mastrototaro in view of U.S. Patent No. 6,122,536 (“Sun et al.”). Each of Claims 11, 22, 24-27, 32-34, and 53 is either allowable or depends from an allowable claim. Accordingly, Applicants respectfully request withdrawal of the rejection.

Claim Rejection - 35 U.S.C. §103(a) – Mastrototaro in view of Sun et al. and Ackerman

Claims 10, 31, and 52 have been rejected under 35 U.S.C. §103(a) as obvious over Mastrototaro in view of Sun et al. and further in view of U.S. Publ. No. 2002/0026111 (“Ackerman”). Each of Claims 10, 31, and 52 depends from an allowable claim. Accordingly, Applicants respectfully request withdrawal of the rejection.

Claim Rejection - 35 U.S.C. §103(a) – Mastrototaro in view of Sun et al. and Ackerman

Claims 7, 8, 49, and 50 have been rejected under 35 U.S.C. §103(a) as obvious over Mastrototaro in view of U.S. Publ. No. 2003/0130616 (“Steil et al.”). Each of Claims 7, 8, 49,

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and 50 depends from an allowable claim. Accordingly, Applicants respectfully request withdrawal of the rejection.

Claim Rejection - 35 U.S.C. §103(a) – Mastrotoaro in view of Sun et al. and Ackerman

Claims 28 and 29 have been rejected under 35 U.S.C. §103(a) as obvious over Mastrotoaro in view of Sun et al. and further in view of Steil et al. Each of Claims 28 and 29 depends from an allowable claim. Accordingly, Applicants respectfully request withdrawal of the rejection.

Conclusion

In view of the foregoing amendments and remarks, it is respectfully submitted that the present application is in condition for allowance. Should the Examiner have any remaining concerns that might prevent the prompt allowance of the application, the Examiner is respectfully invited to contact the undersigned at the telephone number below.

Please charge any additional fees, including any fees for additional extension of time, or credit overpayment to Deposit Account No. 11-1410.

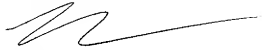
Respectfully submitted,

KNOBBE, MARTENS, OLSON & BEAR, LLP

Dated: _____

5/8/07

By: _____


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